SUPREME COURT OF THE UNITED STATES.

No. 70.

NELSON J. ELLIOTT, PLAINTIFF,

VERSUS

SAMUEL SWARTWOUT.

NEW YORK CIRCUIT COURT UNITED STATES.

Circuit Court of the United States of America for the Southern District of New York. In the second Circuit.

SAMUEL SWARTWOUT, ads NELSON J. ELLIOTT.

Present, the honorable Smith Thompson and Samuel R. Betts.

This cause came before this court on a certiorari to the Superior Court of the city of New York. The action being in assumpsit to recover from the defendant the sum of thirty-one hundred dollars seventy-eight cents, received by him for duties, as collector of the port of New York, on an importation of worsted shawls with cotton borders, and worsted suspenders with cotton straps or ends. The duty was levied at the rate of fifty per centum ad valorem under the second article of the second section of the fourteenth of July, 1832, entitled "An act to alter and amend the several acts imposing duties on imports," as manufactures of wool or of which wool was a component part; the plea of non assumpsit was pleaded by the defendant in bar of the action.

The following points were presented during the progress of the trial for the opinion of the judges, and on which the judges were opposed in opinion.

First point.

Upon the trial of the cause, it having been proved that the shawls imported, and upon which the duty of 50 per centum ad valorem, had been received, were worsted shawls, with cotton borders sewed on; and that the suspenders were worsted with cotton ends or straps; and that worsted was made out of wool by combing, and thereby became a distinct article, well known in commerce under the denomination of worsted.

The judges were divided in opinion whether the said shawls and suspenders were or were not a manufacture of wool, or of which wool was a component part, within the meaning of the words "all other manufactures of wool, or which